
Remarks / Arguments & Status

The application presently contains the following claims:

<i>Independent Claim #</i>	<i>Dependent Claim #s</i>
1	2-7
8	9-14
15	16-20
21	22-26

Claims 1, 7, 8, 14, 15, 20 and 21 are amended. No claims are newly added. Support for the claim amendments are for purposes of clarity only, and support may be found with reference to the specification and figures of the application, particularly, but not limited to Pars. [0006], [0007], [0018], [0041] of U.S. Patent Application Publication 2001/0044772 A1 (the publication of the application at hand), and numerous other locations throughout the specification and figures.

35 U.S.C. §103 Rejection & Responsive Arguments

The examiner has rejected claims 1-2, 5-7, 21-22 and 25-26 under this section, subparagraph (a) as being obvious over Kelly et al.'s U.S. Patent Application Publication 2001/0056397 (hereinafter Kelly). The examiner has further rejected claims 3-4, 8-20 and 23-24 under this section as being unpatentable over Kelly in view of the applicant's disclosure. The examiner represents that Kelly discloses a process for mortgage customer retention by a mortgage servicing institution comprising the steps of capturing customer indicia input by a borrower. The examiner acknowledges that Kelly does not teach of identification of the borrower's mortgage servicing institution either through information input by said borrower or by using said input information to determine said borrower's mortgage servicing institution by comparison with a database of mortgaging servicing institutions. The examiner further acknowledges that Kelly also lacks teaching of linking the borrower with the borrower's mortgage servicing institution, and notifying that servicing institution. The examiner notes that the object of Kelly is to provide a mortgage instrument that can be continuously modified, either at the request of the customer or automatically when certain parameters have been met.

Although the Kelly reference and the invention of Allen, as claimed in the application at issue, share the objective of allowing a borrower to alter the terms of the borrower's mortgage without requiring the borrower to refinance before the terms of the mortgage are changed, the commonality ends there. The differences between the Kelly reference and the claimed invention of Allen is further evidenced by the fact that the examiner represents the Kelly invention teaches of only one of the many elements of the invention as claimed by Allen. The method to implement the product of the Kelly invention and the method of the Allen invention have several patentable distinctions.

The Examiner represents that the arguments of 9/15/2006 have been fully considered, but have not persuaded the Examiner. The Examiner contends that though the Kelly invention requires the implementation of a new mortgage instrument (an element which the Allen application at issue eliminates) the Kelly invention provides relief from the traditional refinance process, as does Allen. While it is true that Kelly and Allen have a similarity in purpose of the inventions, the solutions they suggest implementing in an effort to solve the stated problems differ dramatically. Though the end result of Kelly may be that a consumer is offered relief from the refinance product, the Kelly invention forces the consumer to initially go through that refinance process to reach the desired end result. This is not so with the invention of Allen.

It is well settled that the omission of an element and its function within an already known invention is only an obvious expedient if the remaining elements perform the same function as before. See *Application of Karlson*, 311 F.2d 581 (CCPA 1963). In the present matter, the Allen invention eliminates the necessary Kelly element of requiring the customer to initially implement a new mortgage instrument, namely the specific mortgage instrument proposed by Kelly.¹ Allen not only eliminates that element and function of Kelly, but also changes the function of the invention, in order to achieve the same purpose. The improved function of the Allen invention, that was not foreseen by the Kelly reference, allows all consumers the ability to modify their existing mortgage instrument, with no limitation as to the mortgage instrument held by the consumers. Allen's elimination of Kelly's necessary element and function of the element, while performing a different

¹ See [Page 2, Para 0021] of the Kelly reference: "the present invention begins with a mortgagee contracting for (and obtaining) a **new type of mortgage instrument** that includes a contractual provision specifying that the mortgage rate of the instrument will decrease under certain market conditions..." (emphasis added). Furthermore, the new mortgage instrument of Kelly is a necessary element of the Kelly reference, as the Kelly reference requires the start date or funding date of the new mortgage instrument as an integral date for implementation of the Kelly invention. [Page 2, Para 0022].

function shows Allen's invention in the application at hand is not an obvious variation of the Kelly reference.

The Allen invention allows the consumer to modify the terms of their existing mortgage, with no limitation as to what mortgage instrument the consumer uses. This is not so with the Kelly reference. The Kelly reference only allows for the modification of the specific mortgage instrument described in the Kelly reference. This elimination of elements and different outcome to serve the same purpose is illustrated in the chart shown below:

Kelly Reference	Allen invention (application at hand)
Consumer seeks to refinance existing mortgage instrument and is paired with existing or new lending institution.	Consumer seeks to refinance existing mortgage instrument and is paired with existing lending institution.
Consumer refinances existing mortgage instrument and implements mortgage instrument introduced by Kelly during the refinancing process.	ELIMINATED
Consumer is able to modify their Kelly mortgage instrument without future refinances.	Consumer is able to modify their existing mortgage instrument without the refinance process.
Consumer using Kelly mortgage instrument saves on future refinancing fees.	Consumer using process of Allen invention saves on all refinancing fees.

The Allen invention, as claimed in the application at issue, offers a method for providing the option of modifying the terms of their existing loan without requiring a new loan or classic refinancing (which also requires a new loan instrument to be implemented) to take place. The process claimed by the Allen invention allows **any consumer** to avoid the refinancing process by allowing modification on **any mortgage instrument**. Considering there are tens, if not hundreds, of mortgage instruments commonly available to the average consumer, as can be seen by the chart attached hereto as Exhibit A showing the many mortgage instruments available through a lending institution, the Allen invention allows modification of any of these instruments without burdening the consumer with the refinancing process. To reiterate, the process of the present Allen invention allows for the modification of any mortgage instrument, including but not limited to the mortgage instruments listed on the Quick Reference chart attached hereto as Exhibit A. This **cannot** be said for the mortgage instrument taught by the Kelly reference, as the Kelly reference limits the benefit modifying a mortgage and avoiding a refinance **only to consumers who have implemented**

Kelly's new mortgage instrument, and does not allow for the modification of the instruments shown on the chart attached as Exhibit A.

The differences between the process of the present Allen invention and the method for implementation of the product of the Kelly invention can be further seen in the below diagram, reproduced from the attached Declaration of Timothy Allen. The below diagram is a modification of Figure 1 of the present application, and shows the difference between the claimed invention of Allen and the method necessary to implement the product taught by the Kelly reference.

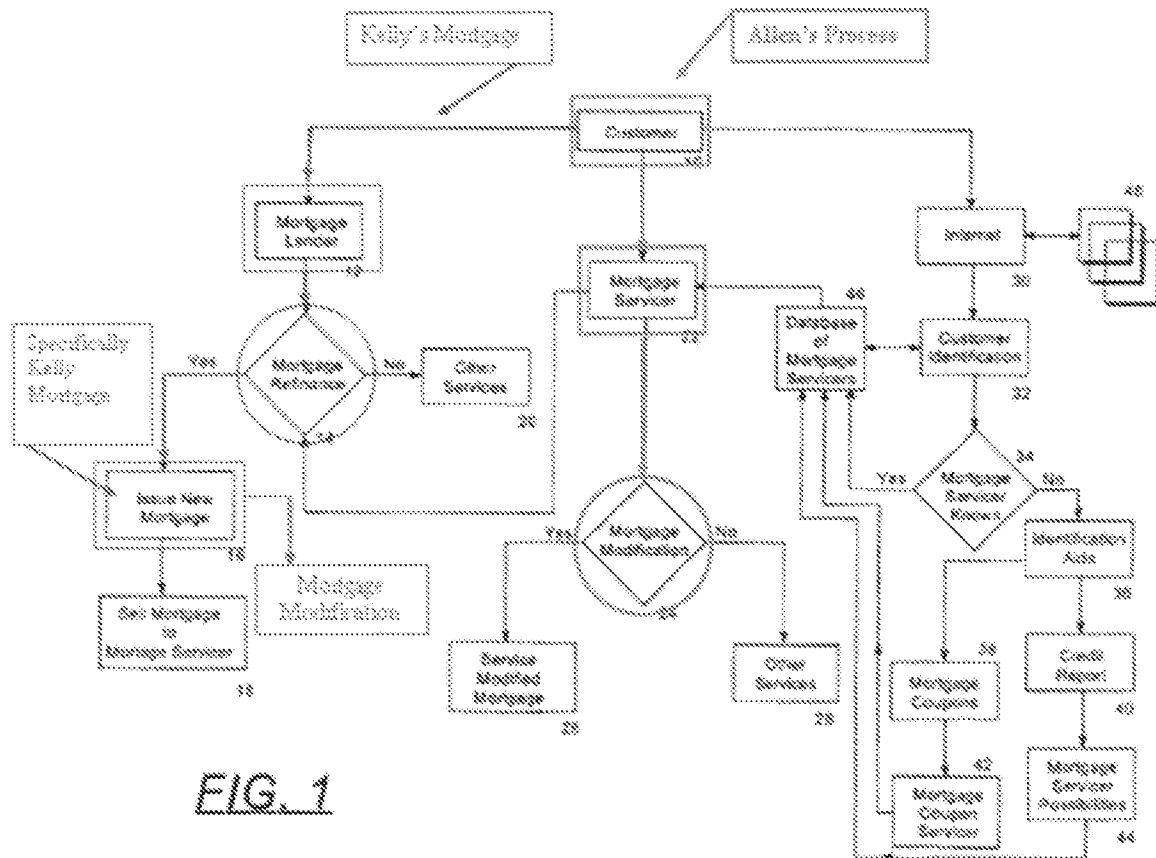


FIG. 1

The Allen invention is a step-by-step process that helps connect the consumer with the lending institution that services their existing mortgage instrument. The lending institution is then able to modify the terms of the existing mortgage instrument for the consumer, regardless of the type of mortgage instrument that is in place. The Kelly reference only suggests modifying the Kelly mortgage instrument, and offers no suggestion of any process allowing for the modification of any

mortgage instrument. The Allen invention opens the door to countless consumers to modify their existing mortgage instrument, which under the Kelly reference would have never had that opportunity.

Request for Reconsideration

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, (including withdrawn dependent claims pursuant to the restriction and species election requirement) by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner.

Fee Determination Record

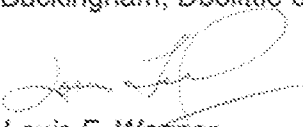
A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

Conclusion

It is respectfully submitted that all references identified by the examiner have been distinguished in a patentably novel and non-obvious way. If the examiner believes that a telephonic conversation would facilitate a resolution of any and/or all of the outstanding issues pending in this application, then such a call is cordially invited at the convenience of the examiner.

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Respectfully Submitted,
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